

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Shuwei Wang (Applicant)
AND ATT Tour Management Pty Ltd (Respondent)
REPRESENTATIVES Shuwei Wang In person
No appearance for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 17 February 2005
DATE OF DETERMINATION 21 February 2005

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problems

[1] The applicant employee Ms Shuwei Wang (“Ms Wang”) claims she was unjustifiably dismissed from her former employment with the respondent company ATT Tour Management Pty Limited (“ATT”). She says she is owed outstanding wages, holiday pay and is further entitled to a refund of a bond she paid to ATT at the commencement of the employment. She seeks the Authority’s assistance to resolve these problems following unsuccessful mediation.

[2] At an initial investigation meeting with the parties I directed them to mediation and indicated that there would be a further investigation meeting shortly thereafter in the event that they were unable to resolve the differences between them. ATT did not attend a subsequent investigation meeting. It returned the Authority’s notice of investigation meeting endorsing the despatching envelope with a handwritten note “*pls repost on next month, because our Managing Director is not in the office (illegible) so pls repost on next month Tks! ATT Tour Staff*”.

[3] ATT ought to have taken proper steps to have the matter further adjourned. It did not do so and consequently I do not accept that it has shown proper cause for its failure to attend. Accordingly, with the assistance of a mandarin interpreter I proceeded to deal with Ms Wang’s application.

The evidence

[4] Ms Wang told me she is not presently assisted by a labour inspector having initially referred the matter to the inspectorate.

[5] She and ATT entered into a written individual employment agreement on 20 December 2002 (the "Agreement"). That Agreement had been prepared by a solicitor. Ms Wang was employed as a tour operator.

[6] The Agreement was supplemented by a further agreement which required Ms Wang to pay a bond of \$10,000.00 to ATT said to be in consideration of the offer of employment. The bond was to be held by the employer "on trust" for two years and then refunded in full.

[7] Ms Wang said she paid \$5,000.00 upfront at the commencement of the employment and as provided for in the supplementary agreement. She provides a proof of that payment to the Authority. The balance of \$5,000.00 was to be deducted by instalments of twenty per cent of her salary. I accept Ms Wang's unchallenged evidence that she paid instalments totalling \$1,380.00 some of which were verified by receipts.

[8] The supplementary agreement provided:-

9. Should the employee be unjustifiably dismissed by the employer anytime before the expiry of the two year period, the bond should be refunded to the employee in full.

[9] It is because of that provision Ms Wang now claims reimbursement of the sums paid by her as the bond, consequent upon her dismissal which she claims was unjustifiable.

[10] Ms Wang says that on 16 April 2004 she was told by Mr Jesse Chang of ATT that she would be employed thereafter without pay. The accountant had been directed not to pay Ms Wang any further wages. Mr Chang also told her she would not be needed the following week. Ms Wang says these actions amounted to a dismissal.

[11] Ms Wang never returned to the employment thereafter. She says that prior to her dismissal on 16 April 2004 she had not been paid wages for March 2004 and for the period she worked in April 2004. She claims she is owed six weeks wages.

Determination

[12] I am satisfied from Ms Wang's unchallenged evidence that on 16 April 2004 she was sent away from her employment. That sending away amounted to a dismissal and there was no justification for it. **I find therefore that she was unjustifiably dismissed. She has a personal grievance and she is entitled to remedies in resolution of that grievance.**

Remedies

[13] Having made that finding and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the Employment Relations Act 2000 to consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[14] I find that Ms Wang did not contribute in any way to the situation that gave rise to the unjustifiable dismissal and there was no blameworthy conduct on her part which could constitute contributory fault. There is therefore no basis for reducing the nature and extent of the remedies to be granted.

Reimbursement

[15] Ms Wang says that following the dismissal she was out of work for three months until she eventually commenced full-time study. I am not satisfied that Ms Wang took sufficient steps to mitigate her losses and I decline to award her reimbursement of lost wages.

Compensation

[16] I am satisfied that Ms Wang has suffered humiliation, loss of dignity and injury to her feelings. **ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the sum of \$2,000.00 as compensation.**

Arrears of wages

[17] I accept Ms Wang's unchallenged evidence that she is owed six weeks wages. I calculate that sum to be \$1,680.00 (6 weeks x \$280.00 per week). **ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the gross sum of \$1,680.00 as arrears of wages.**

Holiday pay

[18] I accept Ms Wang's unchallenged evidence that she is owed three weeks holiday pay. She says that she was not granted paid annual leave. I calculate the sum due to her to be \$840.00 (3 weeks x \$280.00 per week). **ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the gross sum of \$840.00 as outstanding holiday pay.**

[19] Having found that Ms Wang was unjustifiably dismissed, her employment was terminated before the expiry of a two year period from when her employment commenced. She is entitled to have the funds she remitted to the employer as a bond refunded to her. **ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the sum of \$6,380.00 as refund of bond.**

Costs

[20] As Ms Wang was not represented by a professional advocate there will be no order for costs. She is entitled however to be reimbursed her filing fee on this application. **ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the sum of \$70.00.**

Leon Robinson
Member of Employment Relations Authority

Summary of orders

- (i) ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the sum of \$2,000.00 as compensation.**
- (ii) ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the gross sum of \$1,680.00 as arrears of wages.**
- (iii) ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the gross sum of \$840.00 as outstanding holiday pay.**
- (iv) ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the sum of \$6,380.00 as refund of bond.**
- (v) ATT Tour Management Pty Limited is ordered to pay to Shuwei Wang the sum of \$70.00.**